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Answers to Massachusetts's Questions

1. Why did you deviate from the specific rules laid out for imposing penalties set forth in the DRC charter and governing documents, as previously applied, for example, in the New Jersey case? [The old DRP was used to determine New Jersey's case.](#) What authority in the IFTA governing documents did you rely upon in imposing the penalties? [The DRP \(ratified by membership\) gives the DRC broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction\(s\) or licensee\(s\), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance.](#)
2. Is there any prior precedent in the history of IFTA for imposing monetary penalties on a non-compliant member, other than a doubling or tripling of that member's membership fee? [Yes, the shortfall in the number of audits were required to be made up.](#)
3. Have there been other specific instances in the past 25 years (other than the New Jersey example referenced above) where there was a non-compliant IFTA member that either was not penalized or was penalized without the imposition of monetary damages as in this case? [Yes, the audit shortfalls were required to be made up.](#) Assuming the answer is yes, why did you deviate from the practice in those cases in this instance? [The current DRP \(ratified by membership\) gives DRC broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction\(s\) or licensee\(s\), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance.](#)
4. Were the residual effects of the COVID pandemic considered at all when imposing these member penalties? [Yes, membership voted to give the Respondent the option to not include 2020 Data due to COVID.](#) If no, why not?
5. What authority in the IFTA governing documents did you rely upon in crafting the specific penalties that were imposed? [The DRP](#) Why did you determine that it was appropriate to base the penalties for non-compliance entirely on presumed salaries that DOR might have been paid to auditors that DOR had not hired? Was there any determination that there was a shortfall in IFTA fuel taxes collected that occurred by reason of the Massachusetts non-compliance? [That data is a known data set that could be calculated to determine the cost of an audit.](#)
6. Did you consider that imposing monetary penalties for audits that DOR did not perform and also requiring DOR to "make-up" those audits during future years is effectively penalizing DOR twice for the same purported offense? [The audit manual requires jurisdictions to audit 3%.](#)